senger and his goods in the care of a common carrier are damaged in the same accident, it would not be easy to determine whether the carrier's liability should be measured by its duty toward the person, or toward the property of the plaintiff.[17] It is obvious that the only solution of these difficulties lies in the recognition of the fact that two independent rights have been infringed and that a corresponding number of rights of action have arisen as a result. It should be noted, however, that such a doctrine is no objection to a joinder or consolidation under proper circumstances as a check upon useless litigation.[18] Thus, it seems that injuries to the person are so essentially different from those to property, not only in theory, but in their legal consequences, that it would be "impracticable, or, at least, very inconvenient in the administration of justice, to blend the two,"[19] and the doctrine of the principal case, it is submitted, approaches more nearly than that of the contrary decisions to technical and historical accuracy as well as to practical justice and common sense.

EXTRA-DOMICILIARY RECOGNITION OF THE CORPORATE ENTITY.—Though under the doctrine of comity a part or even the whole of a corporation's business may be carried on in a State other than that of its creation, it is elementary that the corporate personality in a certain sense cannot pass beyond the borders of the sovereignty by virtue of whose recognition it enjoys the privileges constituting its corporate existence.[1] The fiction of a corporate entity, then, is properly employed to describe and embody in objective form the sum of its rights and attributes; but the fact that this conception is in truth only a fiction is made clear by the familiar rule that a corporation, though a citizen within the protection of the constitutional guaranty of "due process of law," is not so considered under the "privileges and immunities" clause.[2] The conception of a personality, by its very simplicity and attractiveness, has led in some cases to unfortunate even if logical results.

Of course when the corporation does business in a foreign State, it must submit, no less than a natural person, to the restrictions of the local law; but a difficult problem is met when the validity of a corporate act, prohibited in the foreign domicil but permissible under the laws of the forum, is brought into question. Admittedly the corporation must "bring its charter with it," and cannot exceed the powers conferred by that instrument; but the courts are in conflict as to the extra-domiciliary effect of a restrictive provision of the general law of the domicil. It has been strongly urged that the corporation away

[17]Watson *v.* Texas & Pacific Ry. Co. *supra,* where it was held that two distinct causes of action arose in this situation.

[18]Chicago etc. Ry. *v.* Ingraham (1890) 131 Ill. 659; McInerney *v.* Main (N. Y. 1903) 82 App. Div. 543.

[19]Cullen, J., in Reilly *v.* Sicilian Asphalt Co. *supra.*

[1]Bank of Augusta *v.* Earle (1839) 38 U. S. 519. Thus, for example, if created by a foreign State, it is always considered to be out of the jurisdiction within the meaning of Statutes of Limitations. Larson *v.* A. & T. Co. (1893) 86 Wis. 281; Thacher, Corporations at Home and Abroad, 2 COLUMBIA LAW REVIEW 351.

[2]Paul *v.* Virginia (1868) 75 U. S. 168; see Horn Silver Mining Co. *v.* New York (1891) 143 U. S. 305, 314.

from home, like a natural person, is no longer subject to this general law, but only to the *lex loci;* and that it cannot give the law of its domicil extra-territorial effect.[3] But it is submitted that such a doctrine carries the fiction of an entity out of its proper bounds. A grant of corporate existence "is a grant of special privileges,"[4] which can only be defined by the sovereignty which grants them. The comity which forbids the exclusion of the corporation of a sister State implies no addition to its powers, but amounts to no more than a license to exercise those powers in foreign territory. The corporation can acquire no privileges by doing business in a new jurisdiction.[5] It would seem clear that no matter how general the terms of a charter, it could not be interpreted to confer rights in violation of the general law of the State, and that this existing law, where applicable, should be considered to be as clearly implied in the terms of the charter as it is the case of any ordinary contract. If, for instance, a body corporate claims the power to take and hold land as impliedly incidental to its charter, the existence of a statute prohibiting such bodies from taking land by devise must be held to that extent to limit the implication. The legislature could not have intended to grant a privilege forbidden by law; and if the corporation never had the privilege at home, it cannot get it by doing business in a State where such devises might have been lawful.[6]

A strong analogy, it is submitted, is found in the effect abroad of statutes prolonging corporate existence after dissolution for the purpose of winding up business. In this situation it seems to be generally admitted that a corporation is to be regarded as living or dead according to its status in the State of its creation ,and this conclusion seems to be a necessary and sound outcome of the foregoing principles.[7] But in the recent case of *Castle Adm'r* v. *Acrogen Coal Co.* (Ky. 1911) 140 S. W. 1034, the court reached a result in conflict with them. Under a constitutional provision of Kentucky forbidding the giving of greater privileges to foreign than to domestic corporations, it was held that a local statute such as those above mentioned, continuing corporate existence, authorized the maintenance of a tort action against a foreign corporation after its dissolution at home.[8] The court,

---

[3]White *v.* Howard (1871) 38 Conn. 342; Pairpoint Mfg. Co. *v.* Watch Co. (1894) 161 Pa. 17; Thacher, Corporations at Home and Abroad, *supra.*

[4]Paul *v.* Virginia *supra.*

[5]Starkweather *v.* American Bible Society (1874) 72 Ill. 50; Rue *v.* Mo. Pac. R. R. (1889) 74 Tex. 474; Relfe *v.* Rundle (1880) 103 U. S. 222; Pierce *v.* Crompton (1881) 13 R. I. 312.

[6]Starkweather *v.* Am. Bib. Soc. *supra; contra,* White *v.* Howard *supra.*

[7]Fitts *v.* Nat. Life Ass'n (1900) 130 Ala. 413; Hunt *v.* Columbian Ins. Co. (1867) 55 Me. 290; Dundee Mortgage etc. Co. *v.* Hughes (1898) 89 Fed. 182; see Marion Phosphate Co. *v.* Perry (1896) 74 Fed. 425; Hammond *v.* Nat. Life Ass'n (1901) 58 App. Div. 453, dissenting opinion of Ingraham, J.; see *contra,* Bank of Galliopolis *v.* Trimble (Ky. 1846) 6 B. Mon. 599; Life Ass'n of America *v.* Fassett (1882) 102 Ill. 315; Hammond *v.* Nat. Life Ass'n *supra.*

[8]The court may possibly have been confused by the idea of reincorporation, but it is well settled that this result is not brought about by the grant of a mere license to do business, such as that in the principal case. Goodlett *v.* Louisville R. R. (1886) 122 U. S. 391.

expressly disregarding any effect of the law of the domicil, was so captivated by the entity doctrine as to base its decision on the reasoning that the foreign corporation, on entering the State, subjected itself to the local law, and, under the constitutional provision above referred to, gave up its "privilege" of corporate death. But corporate, like natural death, is not a "privilege" which can be waived. It is part of the law of corporate existence, which cannot be altered except by the State which enacted it. A corporate personality cannot by mere consent give validity to any attempt to increase its rights by foreign legislation, and *a fortiori* it cannot do a thing impossible even to a natural person: consent that after death it should nevertheless remain for certain purposes effectually alive.

STATUS OF APPOINTEES OF A DE FACTO OFFICER.—It has long been recognized that the acts of one who performs the duties of an office without actual right must often be protected from attack.[1] Although such a result suggests an application of the doctrine of estoppel, this clearly cannot be its true basis, for no theory of estoppel could account, for instance, for the illegality of resistance to a *de facto* officer,[2] for the validity of sentences pronounced by a *de facto* judge,[3] or for the rule that a corporation *de facto* may as a corporation sue one who has never in any way admitted its corporate existence.[4] It is usually recognized that the basis of the *de facto* doctrine is the injustice of holding third parties to notice of the invalidity of an officer's tenure, and the necessity of avoiding the confusion and inconvenience which would inevitably follow the impeachment of completed transactions,[5] and it seems that the entire development of the doctrine has been determined by these factors of fairness and general convenience, though indeed the blind application of maxims and definitions laid down by the courts in particular circumstances has given rise to some confusion. It has been said that an officer *de facto* must claim by virtue of some appearance of appointment or election by a body actually qualified to appoint or elect;[6] but, though as a matter of fact this circumstance was present in many of the early cases, the statement, as a rule of law, has been discarded as utterly inadequate, and it is now only required that there shall have been some color of right

---

[1]Petersilea *v.* Stone (1876) 119 Mass. 464; Bush *v.* Collins (N. Y. 1811) 7 Johns. 549; Fowler *v.* Bebee (1812) 9 Mass. 231.

[2]Garrett *v.* State (1892) 89 Ga. 416. It is moreover settled that a *de facto* officer, while he cannot recover salary, because that is due only to the *de jure* holder, People *ex rel. v.* Weber (1878) 89 Ill. 347; Romero *v.* U. S. (1889) 24 Ct. of Claims 331, can plead even as against the state the fact that he is a *de facto* officer as a justification for acts which would otherwise be unlawful. State *v.* Dierberger (1886) 90 Mo. 369.

[3]State *v.* Carroll (1871) 38 Conn. 449.

[4]Society Perun *v.* Cleveland (1885) 43 Oh. St. 481.

[5]State *v.* Carroll (1871) *supra;* Directors *v.* Mohawk & Hudson R. R. Co. (1839) 1 Wend. 135; Matter of Sherrill *v.* O'Brien (1907) 188 N. Y. 185, 212; Brinkerhoff *v.* Jersey City (1900) 64 N. J. L. 225; Bush *v.* Collins *supra;* see Att'y Gen'l *v.* Megin (1885) 63 N. H. 378; King *v.* Bedford Level (1805) 6 East 356, 368-9.

[6]Mechem, Public Officers, 322, 323; 2 Thompson, Corporations, (2nd ed.) 1439.